

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1136V

Filed: January 22, 2016

Unpublished

ANDREW ELEFANT,

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Petitioner,

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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Maximillian Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Claudia Gangi, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT AND DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On October 7, 2015, Petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² [the “Vaccine Act” or “Program”]. Petitioner alleges that he suffered a shoulder injury caused in fact by his September 11, 2014 influenza vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 21, 2016, respondent filed her Rule 4(c) report and Proffer on Damages in which she concedes that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report and Proffer on Damages at 1. Specifically, respondent “has concluded that petitioner’s alleged injury is consistent with shoulder injury related to vaccine administration (SIRVA), and that it was caused in fact by the flu vaccine he received on September 11, 2014.” *Id.* at 3-4. Respondent further agrees that no other cause for petitioner’s injury has been identified and that she has met the statutory

¹ Because this unpublished ruling and decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

requirements by suffering the residual effects of her injury for more than six months. *Id.* at 4.

Additionally, “[b]ased upon the evidence of record, respondent proffers that petitioner should be awarded \$95,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).” Respondent’s Rule 4(c) Report and Proffer on Damages at 4. Respondent represents that petitioner agrees with the proffered award. *Id.*

In view of respondent’s concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation. Further, based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in Respondent’s Rule 4(c) Report and Proffer on Damages.

Pursuant to the terms stated in **Respondent’s Rule 4(c) Report and Proffer on Damages at 4, the undersigned awards petitioner a lump sum payment of \$95,000.00 in the form of a check payable to petitioner, Andrew Elefant.**³ This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ “Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.” Respondent’s Rule 4(c) Report and Proffer on Damages at 4.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.